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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Price Cap Performance Review
for AT&T

)
)
) CC Docket No. 92-134
)
)

To: The Commission

COMMENTS OF AERONAUTICAL RADIO, INC.

Aeronautical Radio, Inc. ("ARINC"),¹ by its attorneys,
hereby submits these comments on the Commission's Notice of Inquiry in the above-referenced matter.² That Notice initiates the FCC's review of, among other things, the safeguards in the price cap rules designed to protect captive ratepayers of monopoly analog private line services.

ARINC and other parties currently have pending at the Commission several petitions for reconsideration or

¹ ARINC is the communications company of the air transport industry and is owned and operated by the airlines and other aircraft operators. ARINC provides the civil aviation community, including the FAA, with a variety of voice and data telecommunications services on a not-for-profit basis and represents industry interests in regulatory and other forums. ARINC and the airlines rely heavily upon AT&T's services to support their nationwide and worldwide communications systems. Accordingly, ARINC and the airlines are significantly affected by the regulatory decisions made in this proceeding.

² Price Cap Performance Review for AT&T, CC Docket No. 92-134, Notice of Inquiry, released July 17, 1992 ("AT&T Price Cap Review").

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clarification³ of the agency's Interexchange Competition Order that modified the price cap rules applicable to analog private line services.⁴ The instant comments are not intended to supersede ARINC's petition in that related matter. Nor should the Commission delay action on ARINC's petition pending the completion of this inquiry, as service users would be adversely affected by the delay. Nevertheless, the concerns presented in ARINC's petition are unquestionably relevant to the matters at issue here.

In its petition, ARINC asked the Commission to close certain loopholes in the price cap safeguards. ARINC noted that AT&T had taken advantage of various ambiguities in the Interexchange Competition Order to increase rates for certain private analog service offerings by as much as 500%,

³ See, e.g., Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, "Petition for Clarification and Reconsideration," filed by Aeronautical Radio, Inc., on November 25, 1991 ("ARINC Petition") (attached).

⁴ Subsequent to the adoption of price caps, the agency undertook to deregulate further AT&T's business services. It concluded that additional streamlining of many of AT&T's business services would enhance competition and, thereby, reduce rates for the public. The FCC recognized, however, that it could not streamline the regulation of private analog circuits because of the lack of competition in that market. The Commission therefore retained those services under full price cap regulation in a revised Basket 3. See generally Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880 (1991) ("Interexchange Competition Order"), recon., 6 FCC Rcd 7569 (1991), further recon., 7 FCC Rcd 2677 (1992), further recon. pending.

effectively circumventing the FCC's goal to protect users of analog private lines from such abuse. Over ARINC's objections, the Common Carrier Bureau allowed those tariff increases to become effective, apparently because the Interexchange Competition Order did not "specifically" preclude such action.⁵

ARINC therefore requested that the agency clarify its decision by specifying the rate elements to be protected from such price gouging and manipulation.⁶ In light of AT&T's actions, ARINC further asked the FCC to establish service bands within the analog private line basket to prevent cross-subsidization detrimental to analog service subscribers.⁷

The urgent need to clarify the scope and protections of the Price Cap Order and Interexchange Competition Order has been underscored by subsequent additional AT&T tariff increases that undermine the Commission's objectives. Most recently, AT&T has proposed to double the rates for certain analog private line services, bringing the overall rate

⁵ AT&T Communications, 6 FCC Rcd 6690 (1991); see also AT&T Communications, 7 FCC Rcd 1966 (1992) (similar increases affecting analog private line services allowed to become effective).

⁶ ARINC Petition at 6-8.

⁷ Id. at 8-9.

increase in less than one year to almost 1000 percent!⁸ Absent prompt action, AT&T will again be permitted to circumvent the intent and purpose of the Commission's price cap rules.

Consequently, ARINC repeats its request here that the agency clarify its rules pertaining to the pricing of Basket 3 analog private line services to prevent cross-subsidization and excessive price increases that jeopardize public safety services required by the travelling public. To that end, ARINC recommends that the Commission establish 5% service band requirements for each element in its new analog private line Basket 3. Such action is necessary to address price cap incentives that are inconsistent with the agency's objectives to ensure service quality and reasonable rates.

Attached for association with its comments in this docket are copies of ARINC's petition to reject the most recent AT&T filings as well as ARINC's "Petition for Clarification and Reconsideration" of the Interexchange Competition Order.⁹ The manner in which AT&T and the Bureau have effectively circumvented any determination regarding the consistency of AT&T's rate increases with the underlying objectives of the Interexchange Competition Order emphasizes

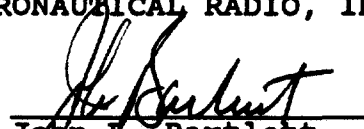
⁸ AT&T Communications, Transmittal No. 4322, filed July 31, 1992. These rates are currently scheduled to become effective on September 29, 1992.

⁹ Attached at Tabs A and B.

the need for further Commission action. Accordingly, the FCC should clarify and reconsider its decision to liberalize regulation of AT&T to ensure the achievement of its goals to prevent monopoly abuse of captive analog service users.

Respectfully submitted,
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September 4, 1992

CERTIFICATE OF SERVICE

I, Kim Riddick, hereby certify that on this 4th day of September, 1992, I caused copies of the foregoing "COMMENTS OF AERONAUTICAL RADIO, INC" to be delivered to the following:

Tariff Division (2 copies)
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554

Downtown Copy Center
Federal Communications Commission
1919 M Street, Room 640
Washington, D.C. 20554


Kim R. Riddick

TAB A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 7 1992
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**PETITION FOR PARTIAL REJECTION,
SUSPENSION OR INVESTIGATION**

**Attorneys for AERONAUTICAL
RADIO, INC.**

August 7, 1992

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
I. INTRODUCTION AND BACKGROUND	2
II. TRANSMITTAL NO. 4322 IS INCONSISTENT WITH COMMISSION OBJECTIVES TO PROTECT CAPTIVE RATEPAYERS	7
III. AT&T'S TRANSMITTAL FURTHER EMPHASIZES THE NEED FOR THE FCC TO CLARIFY THE APPLICATION AND SCOPE OF THE INTEREXCHANGE COMPETITION ORDER	10
IV. CONCLUSION	15

SUMMARY

When the Commission further streamlined AT&T's business services in the Interexchange Competition Order, it recognized that additional protections were needed to ensure the reasonableness of rates for analog private line offerings that are not subject to the same competitive pressures as other business offerings. Thus, the agency decided to retain price cap restraints for analog private line services to curb excessive rate inflation.

AT&T's tariff proposal here tests for the third time in 11 months whether these protections will have any meaning at all. If allowed to become effective, the revisions in AT&T's Transmittal No. 4322, together with earlier revisions, will increase certain rate elements by as much as 1,000 percent. The impact on ARINC alone will be over \$600,000.00 per year, and the airlines and other customers will experience similar exorbitant increases. Captive ratepayers of monopoly services should not be subjected to such pricing abuses.

Accordingly, ARINC calls upon the Common Carrier Bureau to reject AT&T's proposal. The revisions clearly are inconsistent with the Commission's Interexchange Competition Order. If not rejected, the proposed rates should be suspended to allow the Bureau to investigate their reasonableness or, as a minimum, to allow the agency to address this matter in its pending reconsideration of the Interexchange Competition Order. Suspension and investigation are warranted given the likelihood that these rates will be found unlawful, the injury to ARINC and other similarly-situated customers, and the public interest expressed by the Commission in protecting analog ratepayers.

In the Matter of)
)
AT&T COMMUNICATIONS) Transmittal No. 4322
)
Revisions to Tariff F.C.C No. 9)

To: The Commission

Aeronautical Radio, Inc. ("ARINC"), by its attorneys and pursuant to Section 1.773 of the FCC's rules,¹ hereby petitions the Commission to reject, suspend or investigate AT&T's proposed revisions to the rates for analog private line services in the above-referenced tariff transmittal.² By these revisions, AT&T proposes its third rate increase in less than 11 months to achieve a cumulative increase for some elements as high as 1,000 percent.

ARINC calls upon the Common Carrier Bureau to halt such monopoly abuses that flout the FCC's stated goals to protect captive ratepayers of analog services.³ The instant transmittal follows exorbitant increases to the rates for analog private line multipoint circuits, interoffice

² AT&T Communications, Tariff F.C.C. No. 9, Transmittal No. 4322, filed July 31, 1992; ("AT&T Proposal").

³ See generally Competition in the Interexchange Marketplace, 6 FCC Rcd 5880 (1991), recon., 6 FCC Rcd 7569 (1991), further recon., 7 FCC Rcd 2677 (1991), further recon. pending ("Interexchange Competition Order").

circuits, and access coordination functions under Transmittal Nos. 3464, 3465, and 3907 that were likewise inconsistent with the Commission's Interexchange Competition Order and were subject to petitions for rejection filed by ARINC and others.⁴

The filing of Transmittal No. 4322 in the face of these earlier increases also demonstrates the urgent need for the FCC to expedite its clarification of the application and scope of its Interexchange Competition Order to protect analog ratepayers. Such relief was requested by ARINC and other parties almost a year ago.⁵ The FCC should therefore reject, suspend or investigate AT&T's proposed revisions insofar as they result in increases to analog services.

I. INTRODUCTION AND BACKGROUND

ARINC is the communications company of the air transport industry and is owned and operated by the airlines and other aircraft operators. It was organized in 1929 at the suggestion of the Federal Radio Commission. ARINC provides the civil aviation community, including the Federal Aviation

⁴ See generally AT&T Communications, Inc., 6 FCC Rcd 6690 (1991); AT&T Communications, 7 FCC Rcd 1966 (1992).

⁵ See, e.g., Competition in the Interstate Interexchange Marketplace, "Petition for Clarification and Reconsideration," filed on November 25, 1991, and "Supplemental Comments" filed May 22, 1992, by Aeronautical Radio, Inc.

Administration, with a variety of telecommunications services on a not-for-profit basis and represents industry interests in regulatory and other forums. ARINC and the airlines, rely heavily upon private line services to support their nationwide and worldwide communications systems serving the safety and convenience of the travelling public. Accordingly, ARINC and the airlines will be significantly affected by the decision made in this proceeding.

In its Interexchange Competition Order, the Commission concluded that further streamlining the regulation of many of AT&T's business services would enhance competition and, thereby, reduce rates for the public benefit. The FCC recognized that it could not streamline the regulation of private analog circuits, however, because of the lack of competition in that market. Further deregulation of analog private lines, the agency reasoned, could lead to increased prices contrary to its goals.⁶ The Commission therefore retained those services under the protection of full price cap regulation. It also established additional requirements to implement those protections, effective 30 days after Federal Register publication of the Interexchange Competition Order.

AT&T apparently decided to take advantage of the deferred effective date of the Interexchange Competition

⁶ Interexchange Competition Order, 6 FCC Rcd at 5895.

Order to file analog voice grade tariff revisions that did not comply with the agency's additional protections and increased many of AT&T's rates substantially.⁷ Specifically, AT&T proposed in Transmittal Nos. 3464 and 3465 to raise its Analog Multipoint Charges ("MPCs") by 500%, and to raise the charges for service Transfer Arrangements from \$29.50 to \$50.00 per month, an increase of approximately 70%. Moreover, AT&T proposed changes to Interoffice Circuit Charges ("IOCs") that in some cases increased rates by as much as 125%. ARINC estimated that it alone incurred additional charges of over \$200,000.00 per year as a result of these revisions. The airlines and other users were subject to comparable increases.

ARINC and others filed petitions for rejection.⁸ The petitioners argued, among other things, that the transmittals should be rejected because they were inconsistent with the FCC's objectives to protect analog ratepayers and did not provide the cost support or other justification that would otherwise be required for what amounted to an "above cap" increase. As such, AT&T's proposal violated Section 201 of

⁷ AT&T Communications, Tariff F.C.C. No. 9, Transmittal Nos. 3464 and 3465, filed September 17, 1991.

⁸ See, e.g., AT&T Communications, Transmittal Nos. 3464 and 3465, "Petition for Rejection or, In the Alternative, Suspension and Investigation," filed by Aeronautical Radio, Inc., on September 24, 1991 ("ARINC Tariff Petition").

the Communications Act, which requires carriers to establish just and reasonable rates.⁹

ARINC also demonstrated that, if the revisions were permitted to become effective, ratepayers would be forced to pay exorbitant rates for services for which they currently have no competitive alternatives.¹⁰ The fears expressed by ARINC and others in the Price Cap and Further Deregulation Proceedings that users would be subjected to monopoly abuse would then be realized.

AT&T responded that it had technically complied with the price cap rules as they existed prior to the effective date of the Interexchange Competition Order.¹¹ It also claimed that the rate elements at issue in Transmittal Nos. 3464 and 3465 were no longer subject to the FCC's price cap protections. Specifically, AT&T argued that, notwithstanding the FCC's objectives, the Interexchange Competition Order does not apply to analog rate elements associated with

⁹ 47 U.S.C. § 201(b) (1991).

¹⁰ ARINC Tariff Petition at 4-5. ARINC noted that it is transitioning to digital services, but for the present must rely extensively upon voice grade facilities. AT&T should not be permitted to flout the FCC's policies to force ARINC or other users to transition immediately to digital circuits. Such strategies were found unreasonable by the FCC in other proceedings. See, e.g., Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166 Phase II, Part 1, 5 FCC Rcd 400 (1990).

¹¹ AT&T Communications, Transmittal Nos. 3464 and 3465, "AT&T Reply," filed Oct. 3, 1991 at 4-7.

"digital" interoffice circuits, even if the nature of these services is analog. Id.

The Bureau allowed the increases to become effective without an explanation as to how the proposal was consistent with the policies set out in the Interexchange Competition Order. Accordingly, ARINC and others filed petitions for reconsideration of the Interexchange Competition Order seeking clarification.¹² In its petition, ARINC asked the agency to specify the rate elements to be protected from price gouging and manipulation by AT&T. It also asked the Commission to prohibit AT&T from circumventing the intent and purpose of the Commission's protections simply because the precise abuse chosen by AT&T was not "specifically" proscribed. In essence, ARINC asked the agency to prohibit AT&T from elevating "form over substance."

Notwithstanding the fact that ARINC's petition remained pending, AT&T last March again increased rates for analog private line services.¹³ Specifically, AT&T raised the Access Coordination Function ("ACF") monthly recurring rates from \$10.55 to \$20.00, or almost double the then current rate. These revisions resulted in an increase to ARINC alone of over \$175,000.00 per year. Despite ARINC's objections,

¹² See note 5, supra.

¹³ AT&T Communications, Tariff F.C.C. No. 11, Transmittal No. 3907, filed March 2, 1992.

these revisions, too, were allowed to become effective without substantive decision.¹⁴

AT&T has now chosen for the third time to increase the rates for analog private line services. It has proposed to increase MPCs another 100% for a total cumulative increase of 1,000 percent over the past 11 months. In addition, it has proposed to restructure the interoffice circuit charges to eliminate the differences in rates between mileage bands, thereby effecting for certain short haul circuits a 30% increase in this filing and a cumulative increase of approximately 340%.¹⁵ The total economic impact on ARINC alone for the current filing is approximately \$250,000.00 per year and, for all filings, over \$600,000.00 dollars a year! The airlines and other customers will be similarly harmed.

II. Transmittal No. 4322 Is Inconsistent With Commission Objectives To Protect Captive Ratepayers

AT&T's proposed changes to Tariff F.C.C. No. 9 in Transmittal No. 4322, if allowed to become effective, would undermine the objectives established in the FCC's

¹⁴ AT&T Communications, 7 FCC Rcd 1966 (1992).

¹⁵ The fixed mileage charges for the 1-50 mileage band increased from \$75.72 to \$175.22 in November, 1991, and will increase to \$270.00 under the proposed revisions. The per mile charges decreased from \$3.00 to \$1.20 in November, 1991, and will decrease further to \$0.32 under the proposed revisions. Consequently, the monthly charges for a short haul IOC increased from approximately \$79.00 to \$177.00 in November, 1991, and to about \$270.00 under the current proposal.

Interexchange Competition Order. As such, the proposal violates Section 201 of the Communications Act requiring carriers to establish just and reasonable rates.¹⁶ In its Interexchange Competition Order, the Commission concluded that analog private line services are "less subject to competition than other business services."¹⁷ Based on this finding, the FCC concluded "that further streamlining of our regulation of AT&T's analog private line services would not be in the public interest." The agency stated:

[A]nalog private line services are of diminishing importance in the marketplace and these services are consequently less subject to competition than other business services. Under the circumstances, we are concerned that elimination of price cap restraints for analog private lines services could lead to higher prices for these services while many customers would likely respond to higher prices by switching to digital services, adequate substitutes using digital technology are not currently available to all users of analog private line services.¹⁸

Accordingly, the Commission retained price caps, which contain limitations to prevent rate churn and excessive price changes, for these services.¹⁹

¹⁶ 47 U.S.C. § 201(b) (1991).

¹⁷ Interexchange Competition Order, 6 FCC Rcd at 5895.

¹⁸ Id. (emphasis added).

¹⁹ See, e.g., Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873, 3038 (1989) ("Price Cap Order").

Nevertheless, the fears about monopoly abuses expressed by the Commission, as well as by ARINC and others, in the Price Cap and Further Deregulation Proceedings are being realized through AT&T's previous filings and will be reinforced here if Transmittal No. 4322 is allowed to become effective. The Bureau should therefore reject the proposal as inconsistent with the agency's Interexchange Competition Order. The tariff is unlawful on its face because it demonstrably conflicts with the Communications Act and Commission orders.²⁰

Alternatively, the FCC should suspend these rates in order to allow the Commission and interested parties an opportunity to determine their reasonableness. Based on the facts presented above, ARINC has shown there is a high probability the tariff would be found unlawful after investigation. It also has shown that irreparable injury will result if the tariff filing is not partially suspended because of, among other things, the adverse impact it will have on ARINC's provision of services, including public safety services, for travellers.

On the other hand, the partial suspension requested here would not substantially harm AT&T or other interested

²⁰ See, e.g., American Broadcasting Cos. v. FCC, 633 F.2d 133, 138 (D.C. Cir 1980); Associated Press v. FCC, 448 F.2d 1095, 1103 (D.C. Cir. 1971); MCI v. AT&T, 94 F.C.C. 2d 332, 340-41 (1983).

parties, because ARINC is not asking the agency to suspend rate decreases and AT&T is not entitled to unreasonable rate increases. Finally, the suspension would not be contrary to the public interest. In fact, ARINC has shown that suspension is consistent with the public interest expressed by the Commission in its Orders.

In any event, it is in the public interest to avoid unreasonable rates, disruptive rate churn and violations of the FCC's rules. Thus, ARINC has met its burden to justify a suspension under the circumstances.²¹ If the Bureau chooses not to suspend the tariff, it should as a minimum investigate the lawfulness of the rates.²²

III. AT&T's Transmittal Further Emphasizes the Need for the FCC To Clarify the Application and Scope of the Interexchange Competition Order

Transmittal No. 4322 emphasizes the critical need to clarify the application and scope of the Interexchange Competition Order. Specifically, the FCC should clarify what rate elements should be considered protected under the Commission's rules and in particular whether analog multipoint charges should be subject to these protections

²¹ See generally 47 C.F.R. § 1.773(a)(iv) (1991).

²² The agency should suspend the rates for at least one day and establish an accounting procedure before initiating an investigation to ensure that ARINC can obtain retroactive relief. See, generally Illinois Bell Telephone Company v. FCC, No. 89-1365 (D.C. Cir. June 16, 1992).

whether or not they are associated with analog or digital interoffice circuits.

In its pleadings on Transmittal Nos. 3464 and 3465, AT&T claimed that analog services that connect to digital interoffice circuits should not be placed in the new Basket for analog services established by the Interexchange Competition Order. AT&T claimed that to do so "would make the services subject to continuing price cap regulation dependent not on the nature of the service provided by AT&T (i.e., analog or digital) but on the nature of the customer's terminal equipment."²³

AT&T's position is inconsistent with the intent and purpose of the Commission's objectives. Although AT&T may employ digital inter-office circuits, it provides analog service to ARINC. Indeed, the concerns expressed by ARINC and other users of analog private line services -- concerns recognized as valid by the Commission -- are driven by the analog nature of the termination points of a circuit. For marketplace purposes, a circuit is defined as analog or digital by its termination points, not by its interoffice circuits. A customer is captive and in need of greater regulatory protection because its termination points are

²³ See Letter from John J. Langhauser, AT&T, to Donna R. Searcy, FCC (Oct. 22, 1991) ("AT&T Letter") (Informational letter associated with AT&T Transmittal Nos. 3464 and 3465) at 2.

analog. This circumstance does not change because AT&T unilaterally converts its IOCs from analog to digital in order to accommodate its own business objectives.²⁴

More importantly, AT&T's position ignores the FCC's objective to protect analog ratepayers that subscribe to monopoly services without competitive alternatives. AT&T's claim that there are numerous suppliers of analog multipoint circuits and, thus, that analog users are not captive ratepayers is disingenuous.²⁵ In fact, the number of viable alternative suppliers is limited. Moreover, no new providers are likely to enter this particular segment of the market, since demand is declining as users transition to digital services. Thus, AT&T remains the dominant provider of analog multipoint services.²⁶

Even if numerous suppliers existed, ARINC and other current AT&T customers would not be able to switch easily to

²⁴ Customers with analog multipoint circuits used in conjunction with analog IOCs usually do not request a conversion from analog to digital IOCs. AT&T unilaterally implements the conversion for its own purposes and simply notifies the customer of its action. See AT&T Transmittal No. 1587 (filed April 28, 1989). From the customer's perspective, the conversion is transparent; the customer receives the same service following the conversion that it received before the conversion.

²⁵ AT&T Letter, at 2-3.

²⁶ The Commission has recognized that AT&T holds a much higher market share for the analog private line segment of the private line market than for other segments of that market. Interexchange Competition Order, 6 FCC Rcd at 5892 n.106.

those suppliers. The costs and disruptions associated with such forced migration outweigh any perceived countervailing purposes. ARINC has estimated that its own costs of transitioning to digital multipoint circuits would total over \$2 million. The airlines and other users would incur similar expenses. Moreover, intolerable disruptions would likely occur during such a transition because of the need to coordinate and test changed circuits.

Indeed, a customer with a multipoint network has limited options when confronted with a substantial rate increase. The customer can simply pay the higher charges. Alternatively, the customer could convert its network to digital, but to do so would entail both a complete re-engineering of its network, with the attendant installation and other provisioning charges, as well as the substitution of terminal equipment. In essence, the customer would need to install an entirely new network and would likely have to operate dual networks for some period of time in order to ensure uninterrupted service. Or, the customer could move its traffic to another service provider, assuming it could find a company that could handle its analog requirements.²⁷ This alternative also would require a

²⁷ Although companies other than AT&T offer analog services, the differences in the ready availability and ultimate quality of service among carriers in this service area can be substantial.

complete re-engineering of the customer's network as well as substantial installation and provisioning expenses.

In sum, AT&T's classification of analog MPCs as digital services would effectively circumvent the protections of the Interexchange Competition Order. Despite AT&T's suggestions to the contrary, a circuit is defined as analog by its termination points, not by its IOCs. And, as Transmittal No. 4322 dramatically illustrates, rates for analog services are not adequately constrained by market forces. Consequently, the FCC should either clarify or reconsider its Interexchange Competition Order to specify that all rate elements associated with the provision of analog services, regardless of AT&T's network configuration, are to be included under its new Basket 3. Only by such action can the agency establish adequate protections to ensure the proper implementation of its decision to protect analog private line users.

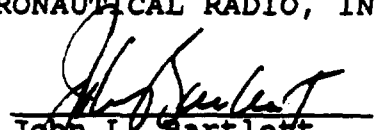
IV. CONCLUSION

For the foregoing reasons, AT&T's Transmittal No. 4322 should be rejected, suspended or investigated to determine the reasonableness of the rates in light of the Interexchange Competition Order. The agency should consider whether AT&T's filing is an acceptable response to the FCC's concerns regarding private line rates or, as is shown by ARINC herein, contrary to the Commission's goal to protect ratepayers of monopoly services.

Respectfully submitted,

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